

QUESTION PERIOD

THE CONSTITUTION

FAILURE OF MEECH LAKE ACCORD—INTERPRETATION OF AMENDING FORMULA—EFFECT OF TIME LIMITS FOR PROCLAMATION

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I should like to ask the Leader of the Government in the Senate a question arising out of the events of the weekend.

Hon. Jacques Flynn: They are not important!

Senator Frith: I saw the Leader of the Government in the Senate holding a press conference on television. I happened to have a copy of *The Constitution Acts* handy when he announced that he was considering referring a question to the Supreme Court of Canada on the interpretation of subsection 39(2), Part V, of the procedure for amending the Constitution of Canada, dealing with time limits on the amending proclamation.

It is the proclamation that effectively causes the amendment, not the initiation or the adoption of resolutions. Subsection 39(1) says that a proclamation should not be issued before the expiration of one year. Then subsection 39(2) says:

- (2) A proclamation shall not be issued under subsection 38(1) after the expiration of three years from the adoption of the resolution initiating the amendment procedure thereunder.

I thought it was a rather strained possibility, but I understood his reaching for anything available. I took it from his press conference that he proposed a rolling clock theory; in other words, the clock could keep ticking on the basis of three years after any adoption of the resolution, whereas most people have assumed that it was the first adoption that started the ticking that stopped three years later.

I was professionally intrigued by that possibility, although I thought it would not succeed. However, I was unable to understand, if the clock could be kept ticking, why it would be ticking only for Manitoba, and not for Newfoundland. In his press conference the Leader of the Government said that his proposal for a reference to the Supreme Court of Canada depends on the adoption of the resolution by Newfoundland. That seemed to be an obvious attempt to put pressure on Mr. Wells. Why was the clock to be allowed to tick only for Manitoba, where the matter had dropped, and not be allowed to keep ticking for Mr. Wells, who, after all, had asked for the opportunity to have a referendum?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, my friend is raising matters that, no doubt, he will want to refer to in his speech, if he makes one in the course of the debate that he says should take place on the Notice of Inquiry put forward by Senator Olson. I shall take advantage of that occasion as well, if he raises it at greater length, to deal with the matter to which he has referred.

[The Hon. the Speaker.]

In the course of my news conference on Friday I went so far as to read, in draft form, the question the Government of Canada would put to the Supreme Court of Canada in a reference; I also indicated the position the government would take on the matter. I believe the honourable senator has summarized the argument correctly. I note his professional opinion that it is a strained possibility and would not succeed at the Supreme Court of Canada. I am unable to give a professional opinion of my own on the matter, not being a member of the legal profession. However, I can tell him that the view of the federal Department of Justice is that we would have a strong case to make.

• (1550)

As far as the difference between the Newfoundland situation and the Manitoba situation, I am not in a position to state what the effect of that would be in legal terms. However, I can tell him that the scenario put forward by the Department of Justice was one in which the Manitoba leaders had already indicated their support for the Meech Lake Accord, and a positive vote in Newfoundland would have presented us with a set of facts, as follows: First, nine provinces would have ratified Meech Lake; the tenth, Manitoba, would have ratified it but for lack of time. That would be a different set of facts, to go to the court with, than a situation in which Manitoba had run out of time, but Newfoundland had simply refused to vote the accord.

Secondly, in terms of the politics broadly understood of the matter, we would have been in a position to ask the Province of Quebec, the National Assembly of Quebec, to revote the Meech Lake Accord in order to complete the circle. Politically, it is one matter to ask them to revote the accord when all provinces had indicated their support and quite another to ask them to revote it at a time when nine provinces had indicated their support and one had simply refused to vote it.

Senator Frith: I sense that we agree that there was no connection between Newfoundland's approval and the question as it would have appeared before the Supreme Court in the sense of the argument before the Supreme Court, but, rather, that the government said it would not put the question without prior Newfoundland adoption. It was a political rather than a legal decision.

Senator Murray: That is not an unfair construction, but I would still want to ask our legal advisers to state the situation in their own language for my honourable friend.

FAILURE OF MEECH LAKE ACCORD—ACTIONS OF MINISTER OF STATE FOR FEDERAL-PROVINCIAL RELATIONS—EFFECT ON MANITOBA LEADERS

Hon. H.A. Olson: Honourable senators, I wish to ask the Minister of State for Federal-Provincial Relations if he arranged to have a conference-type telephone call to the leaders of the three parties in Manitoba and then requested them to set aside all their rules with respect to interrupting the debate, invoking closure, and preventing Manitoba from following its stated process in having some public hearings, while